

**DEPARTMENT OF WATER RESOURCES**

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May 11, 2007

Ms. Paige Caldwell  
Deputy FCCE Program Manager  
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Dear Ms. Caldwell:

This letter provides preliminary comments on the U.S. Army Corps of Engineers' (Corps) proposal to change its policy on vegetation control for levee systems as reflected in the draft final White Paper dated April 20, 2007 entitled *Treatment of Vegetation within Local Flood-Damage Reduction Systems*. In order to meet the May 11, 2007 deadline for comments, the comments contained in this letter reflect only the initial, very serious concerns of the Department of Water Resources (DWR) and the Department of Fish and Game (DFG). Both DWR and DFG believe that the planned implementation of this rigid, new policy will result in serious degradation of both flood protection and critical habitat along California's river system. A more thoroughly coordinated letter reflecting comments throughout the administration of the State of California (State) will be provided at a later date.

Both DWR and DFG welcome the Corps' efforts to reduce flood risks to the citizens of California. To this end, the Corps is considering a new policy to clarify and begin rigidly enforcing long standing standards for inspection and maintenance of federally authorized levees throughout the United States. However, such a policy would constitute a significant shift in the Corps' practice in California and will have serious and adverse public safety and environmental consequences. The draft final White Paper provides no case studies or compelling evidence of the need for such a policy. We are deeply concerned that, for no apparent good reason, the Corps' new policy would require virtually all trees to be removed from all federal levees in California, including trees that were already well-established on the levees when the federal government turned over the completed works to the State and other local agencies. Also, because many non-federal levees qualify for federal rehabilitation assistance, the Corps' new policy has the potential to impact many non-federal levees in California, as well.

Over the years, the Corps and the State have reached an agreement on how trees and other vegetation can co-exist with the public safety function of levees in the Central Valley. This long-lived agreement would now be ignored and set aside by the new, nationwide policy. Specifically, the inspection and maintenance standards that the Corps would begin enforcing under the new policy are inconsistent with over 50 years of accepted levee maintenance practices in California, encroachments authorized by the Corps, and State regulations established in cooperation with the Corps. Most importantly, in some cases the removal of trees may actually have a detrimental impact to the integrity of the levee unless proper engineering and costly remediation is included in the process. In some cases, it may be necessary to over-excavate the levee and/or install sand filters to address seepage along decaying root systems. The policy provides inadequate guidance for this very much needed element. Furthermore, in some areas, engineering studies would show that levees are wide enough that costly and detrimental vegetation removal is not necessary. This issue is not addressed adequately either.

The new policy also ignores the devastating impact that would occur to California's shaded riparian habitat. The levees that confine today's river systems in California are holding the last remnants of a once great riparian forest ecosystem that dominated the Central Valley. Many of California's fish and wildlife resources evolved in this complex and diverse plant community. They depend on riparian habitat for at least some part of their life cycle. Riparian areas provide food, shelter and nesting habitat for many dozens of terrestrial wildlife species. They also provide a safe transportation corridor for wildlife species that must move up and down the river in pursuit of basic life needs. The habitats along these levees provide the shaded riverine aquatic habitat necessary to support listed salmonids, such as winter-run and spring-run Chinook, and Central Valley steelhead. In addition, the Central Valley and Delta shaded riverine aquatic habitats provide the critical rearing area for one of the last remaining commercial salmon stocks in California, the Central Valley fall-run Chinook. Broad environmental and economic consequences of removing riparian vegetation include real declines in available habitat and potential increase in petitions to list species under the State and Federal Endangered Species Act that depend on the habitats along these levees. With such significant natural resources at stake and substantial financial investments to sustain critical environments at stake, California needs a unique set of levee maintenance guidelines.

The policy also seems to inadequately address the considerable regulatory hurdles that local agencies would encounter in implementing this policy. The permitting process and undoubtedly immense environmental mitigation costs would be beyond the capacity of many, if not most, local maintaining organizations. It is not reasonable to expect that local maintaining organizations would be able to finance and implement this new, rigid policy in the next year.

An unintended, and potentially very unfortunate, consequence of suddenly imposing more stringent levee vegetation management standards is that more critical flood protection upgrades, such as slurry cutoff walls, seepage berms, and erosion protection may be deferred to address lesser risks to system safety, such as rigid vegetation removal and right-of-way concerns. It is ironic that many of the more critical flood improvement efforts that are needed actually address serious design deficiencies that were part of the completed federal flood control system that the Corps turned over to the State and local agencies. In addition to deferring flood improvements, local maintenance efforts and funding may also be misdirected as a consequence of the Corps' new policy.

We believe that it is imperative that the Corps work with State, federal, and local agencies in California to demonstrate a compelling need for a new policy, refine the new policy by taking into account engineering considerations and local conditions, develop procedures to ensure that the tree and other vegetation removal does not adversely affect levee integrity or habitat, and formulate a process and timeline to integrate the Corps' policy into California's strategic flood safety initiative, known as "FloodSAFE California." Under FloodSAFE California, the State is repairing and improving flood control systems, improving levee maintenance, and enhancing its emergency response capability. With the passage of the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Proposition 1E) and the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84) by the voters of California, the State seeks federal government support and cost-sharing to promote multi-objective projects. These multi-objective projects include improving flood management, enhancing and preserving habitat, maintaining agriculture, supporting water quality, enhancing recreational opportunities, and providing open space benefits. As the FloodSAFE California initiative moves forward, new levee operation and maintenance standards need to be properly staged and coordinated to ensure all of the following:

1. Any alteration in levee maintenance standards is based on current scientific, environmental, and engineering studies and that local conditions are considered in their applications.
2. The potential conflicts with existing environmental laws, particularly the federal and California endangered species acts, wetlands protections, resources coordination requirements, and mitigation needs, are resolved reasonably.
3. The Corps' inspection and maintenance standards are phased properly so that State and local agencies can plan, design, finance, and execute the multipurpose projects necessary to comply with the Corps' new policy. In particular, proper removal of mature vegetation, protection of sensitive plant and wildlife species, and acquisition or reclaiming rights-of-way are all activities that require substantial planning, environmental review, permitting, engineering, and pre-mitigation (for example, there are no maintenance exemptions from the federal Endangered Species Act or Section 10 of the Rivers and Harbors Act).



4. Any new standards are phased with other flood improvement work to ensure that the most critical public safety actions will have "first call" on limited federal, State, and local resources.
5. The ultimate implementation of the Corps' new policy addresses both technical and cost issues associated with the removal of thousands of trees, and their root systems, located along hundreds of miles of levees in California.
6. An exemption process is implemented to allow retention of trees and other vegetation established on oversized levees.
7. The ultimate strategy that is adopted is thoughtfully implemented to enhance public confidence in the ability of our federal-State-local partnership to respond effectively to our well-publicized flood safety challenges. It is imperative that we avoid sudden, drastic, or poorly coordinated initiatives that will undermine public confidence. Public confidence will be essential as California tries to pass future bond measures to fund flood protection.
8. The benefits of vegetation on levee embankments are fully evaluated and considered, both with regard to the ecological functioning of riparian and adjacent riverine ecosystems, and the habitat value to wildlife and fisheries. As discussed previously, the benefits are substantial and of great importance to the State.

In summary, the unique setting and resource value of California's flood systems warrants a more tailored policy regarding vegetation management than one that would simply clarify and rigidly enforce inspection and maintenance standards that have not been rigorously or consistently applied for over 50 years. Therefore, prior to implementing any new policies or guidance related to levee operation and maintenance, we urge the Corps to work collaboratively with the State and federal resource agencies, together with State and local levee maintenance agencies. We look forward to working with you to revise and fully develop this new policy and offer our combined staffs to aid you in this effort. I encourage you to work directly with John McCamman, Chief Deputy Director of the Department of Fish and Game, and me. I can be reached by telephone at (916) 653-9502, or by email at [harder@water.ca.gov](mailto:harder@water.ca.gov). Mr. McCamman can be reached by telephone at (916) 653-7667 or by email at [jmccamman@dfg.ca.gov](mailto:jmccamman@dfg.ca.gov).

Sincerely,

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Deputy Director

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